THE HON'BLE SRI JUSTICE NOUSHAD ALI

Criminal Appeal No.87 of 2005

JUDGMENT:

This is an appeal against conviction.

2. The appellant, who was working as a lineman in the erstwhile A.P. State Electricity Board (APSEB), Madhurawada (P.O), Visakhapatnam District, was tried on two charges under the provisions of the Prevention of Corruption Act, 1988 (for brevity 'the Act') in C.C.No.57 of 2000 (old C.C.No.2 of 1996) on the file of II Additional District and Sessions Judge-cum-Special Judge's Court for ACB Cases, Visakhapatnam. The 1st charge is under Section 7 and the 2nd charge, which is connected with the first one, is under Section 13(2) r/w Section 13 (1)(d) of the Act, both based on the allegations of bribery and trap.

3. The trial Court by its judgment dated 10.01.2005 convicted the appellant of both the charges and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month for the charge under Section 7, and further sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month for the charge under Section 13(2) r/w Section 13(1)(d) of the Act. Both the sentences have been directed to run concurrently. Questioning the said judgment this criminal appeal has been filed by the appellant (hereinafter referred to as the Accused Officer).

4. It is not in dispute that the accused officer being an employee in APSEB is a public servant. It is also not in dispute that he was prosecuted after duly obtaining sanction orders from the competent authority.

5. PW.1-defacto complainant, Seerapu Ganeswara Rao was a

resident of house bearing D.No.LIG 11/3, which has electricity connection with service No.1072. Power was disconnected for non-payment of consumption charges. PW.1 paid the arrears on 20.02.1995 and obtained restoration order dated 1.03.1995 (Ex.P.3(a) from PW.4. He then met the accused officer on the same day for restoring the service connection. The accused officer demanded Rs.500/- towards bribe to do the said job. PW.1 met him again on 3.03.1995 and the accused officer though made the entry of the reconnection order in the concerned register, insisted upon PW.1 to pay the bribe. PW.1 met the accused officer for the third time on 7.03.1995 and this time he asked Rs.250/- by reducing his demand. On all the occasions i.e., 1.03.1995, 3.03.1995 and 7.03.1995, PW.1 was accompanied by PW.2 and witnessed the demands made by the accused officer.

6. PW.1 was not inclined to pay the amount. Therefore, he gave Ex.P.4-complaint to the DSP, Anti Corruption Bureau, Visakhapatnam (PW.6) on 7.03.1995 at 4.00 pm.

7. On 8.03.1995 pre-trap proceedings were held at the office of the DSP by securing the presence of mediators, viz., Dr. P. Rajagopal, who was working as Veterinary Assistant Surgeon, Frozen Semen Bull Station, Visakhapatnam (PW.3) and Sri R. V.V. Satyanarayana, Veterinary Assistant, working in Rinderpest Vigilance Unit, Visakhapatnam. After recording the proceedings in Ex.P.6 at about 8.25 am., the trap party reached at 9.30 am., A.P. Housing Board Colony at which the house of the accused officer is located. PW.1 along with the accompanying witness PW.2 proceeded to the residence of the accused officer, while the rest of the trap party awaited near the residence taking vantage positions. After receiving the pre-arranged signal from PW.2, the trap party rushed to the house and recovered the tainted amount from the accused officer. The colour test conducted on his fingers and shirt pocket yielded positive results. The

proceedings were recorded in the mediators report-Ex.P.10.

8. It may be noted at this stage that when the accused officer was asked to explain whether he had taken bribe from PW.1, his spot explanation as recorded in Ex.P.10 proceedings was that he took the amount for obtaining a demand draft for providing a meter to the house of the complainant but not as bribe. But while cross-examining PW.1 he took an inconsistent stand that the amount was forcibly thrusted into his shirt pocket. These aspects would be more properly dealt with later in this judgment.

9. The prosecution, in order to bring home the guilt of the accused officer, examined PWs.1 to 6 and marked Exs.P.1 to P.14. The Accused Officer examined DW.1 and got marked Exs.D.1 and D.2 to show contradiction in the statement of PW.1 recorded under 164 Cr.P.C. Material objects MO.1 to MO.8 were also marked during the course of trial.

10. The trial Court on a consideration of the evidence on record and the plea of the accused officer held that he is guilty of the offences and accordingly convicted him. The trial Court did not find any substance in the contention of the accused officer that he was implicated in a false case at the instance of PW.1, who allegedly bore grudge against him.

11. Heard Sri C. Praveen Kumar, learned counsel appearing for the accused officer and Sri Ghani A. Musa, learned Standing Counsel appearing for the respondent.

12. The learned counsel for the accused officer while reiterating the contentions that were canvassed before the trial Court, would contend that the accused officer was implicated in a false case. PW.1 is a private electrician and he was in the habit of giving illegal connections to the disconnected services. Noticing his activities, the accused officer reported the same to the concerned officers and in that

connection, there was an altercation between him and PW.1, and therefore PW.1 bore grudge against him and to take vengeance got him implicated. The counsel would further submit that the accused officer is deaf and afflicted with paralysis. He is suffering from speech incoherence, therefore it is highly improbable for such a person to demand and accept the bribe and keep the same in his shirt pocket. It is his further contention that though the amount was recovered, which according to him was thrusted into his pocket, mere recovery is not sufficient to prove the allegation of bribery. Though there is legal presumption due to the recovery of amount, the accused officer has rebutted the same through the evidence of DW.1. The counsel would therefore contend that the conviction recorded by the trial Court is erroneous and is liable to be set aside.

13. On the other hand, the learned Standing Counsel would submit that the evidence on record would disclose that the accused officer is guilty of the charged offences. He would contend that not only the said evidence is consistent but the same has not been impeached in any manner by the accused officer. The version put up by the accused officer attributing motives to PW.1 for implicating him and that he is physically disabled to receive the bribe amount, cannot be accepted on a proper scrutiny of the evidence. He would further contend that the trial Court rightly appreciated the evidence on record and recorded the findings against the accused officer holding him guilty. He would therefore submit that the judgment, convicting the accused officer, is not liable to be interfered with.

14. I have considered the aforesaid contentions and examined the evidence on record.

15. The undisputed facts are that the accused officer was working as a lineman and he was in-charge of the maintenance of power lines; that the service connection of the residence of PW.1 was disconnected for failing to pay the consumption charges of Rs.120.60

ps.; and that PW.1 paid the said amount in addition to Rs.20/- towards reconnection charges on 20.02.1995, under Ex.P.2 receipt. He also obtained reconnection orders-Ex.P.3 on 1.03.1995. It is also not in dispute that there was a trap conducted at the residence of the accused officer in which tainted amount-Ex.MO.3 was recovered from him and the colour test conducted on his hand fingers and shirt pocket proved positive as per Exs.MO.1, MO.2 and MO.4.

16. In the light of the aforesaid admitted facts, it has to be seen whether the prosecution proved the case against the accused officer beyond reasonable doubt as to demand and acceptance of illegal gratification, if so, whether he has succeeded in rebutting the presumption in that regard.

17. PW.1 is the de facto complainant. His evidence discloses that he paid the arrears of consumption charges on 1.03.1995 and obtained orders Ex.P.3 for reconnection. On the same day, he also obtained necessary endorsement-Ex.P.3(a) from the concerned officer and met the accused officer along with his friend Manikyala Rao (PW.2). The accused officer demanded Rs.500/- for giving reconnection. PW.1 met the accused officer again on 3.03.1995 along with PW.2, but he declined to do the job unless the said amount was paid. PW.1 met him third time on 7.03.1995 along with PW.2 and even on the said date the accused officer insisted for payment of demanded amount. On the request of PW.1, the accused officer reduced the demand and agreed to receive Rs.250/-. Thus it is in the evidence of PW.1 that the accused officer demanded bribe amount for doing the official favour on three occasions i.e., on 1.03.1995, 3.03.1995 and 7.03.1995. As stated above, the tainted amount was recovered from the accused officer on 8.03.1995 in the trap proceedings.

18. To test the veracity of PW.1’s evidence, it is necessary to examine the evidence of PW.2. PW.2 was not only an accompanying

witness on the date of trap, but also an eye-witness on all the three occasions when PW.1 met the accused officer. PW.2 corroborated the evidence of PW.1 in all material particulars regarding PW.1 meeting the accused officer and the accused officer demanding bribe amount from him. His evidence is consistent with the evidence of PW.1. Though PW.1 and PW.2 were cross-examined, the accused officer could not extract any statement to support his case from the said witnesses. Therefore, the evidence of PW.1 and PW.2 has remained unimpeached, which clearly discloses that the accused officer demanded the bribe amount on all the three occasions.

19. PW.3 is a mediator, who spoke about the trap and the contents of mediators' reports-Exs.P.6 and P.10, and also the scribe of both the reports. From his evidence it is evident that tainted amount was recovered from the accused officer.

20. The evidence of PW.6, who is a trap laying officer, corroborates the evidence of PW.3 that the amount was recovered from the accused officer. Though the said witnesses were cross-examined, their evidence also could not be impeached.

21. Though an attempt is made to support the contention that the amount was thrusted into the pocket, because PW.3 stated that the accused officer was subjected to chemical test only after he was made to take out the amount from his pocket, it may have to be noticed that the said statement does not lead to necessary inference that the money was thrusted. There is no evidence in that regard. Further as noticed, Ex.P.10-mediators report clearly indicates that before the accused officer was asked to produce the amount his hand fingers were subjected to chemical test.

22. Thus on an examination of the evidence of PWs.1, 2, 3 and 6 it must be held that the accused officer demanded and accepted the bribe amount from PW.1 for favouring him with reconnection.

23. As noticed before, the accused officer took inconsistent

pleas, firstly stating that the amount was given to him towards the charges for a new connection to the house of PW.1. This plea was not pursued. But his later plea was that the amount was thrusted into his pocket by PW.1, who allegedly bore grudge against him and implicated him in a false case. To support the said contention, the accused officer examined DW.1, who is a private electrician and also the owner of an electrical shop. Though he stated that PW.1 is in the habit of giving illegal connections by taking money from the consumers and that PW.1 himself took the connection illegally, the said witness did not furnish the names and the service connections of those consumers and the date on which PW.1 provided illegal connection to his house. It is true that PW.4, who is an Assistant Engineer, in his evidence stated that the accused officer informed him that PW.1 was giving illegal connections. But no inference can be drawn from the said statement that PW.1 bore grudge against him because PW.1 was not even aware of the complaint. Therefore PW.4 asked him to report the matter to the concerned Assistant Engineer for action, but the accused officer did not take any steps in that regard. Thus the evidence of DW.1 and PW.4 does not in any way support the plea of the accused officer that PW.1 bore grudge against him.

24. There is yet another reason. PW.1 first met the accused officer on 1.03.1995, then on 3.03.1995 and also on 7.03.1995. It is on record that the accused officer made the first demand on 1.03.1995, followed by his demands on 3.03.1995 and on 7.03.1995. If really PW.1 bore grudge against the accused officer, he would have taken the first opportunity and given the complaint immediately after the demand was made on 1.03.1995 and would not have approached the accused officer twice on 3.03.1995 and 7.03.1995. Further according to the evidence of PW.4, the accused officer informed him about the illegal activities of PW.1 one week or 10 days before the trap. The trap

was on 8.03.1995. It may then be seen that the alleged report to PW.4 is so proximate to the date of demand i.e., 1.03.1995. Thus there is absolutely no reason to believe the version of the accused officer that PW.1 bore grudge against him and implicated him in a false case.

25. The evidence on record clinchingly establish that the accused officer demanded and accepted illegal gratification. He failed to rebut the statutory presumption against him by adducing cogent evidence or by impeaching the evidence of PWs.1 and 2 in their cross-examination.

26. The trial court, which has taken into consideration all the factors including the evidence on record and the plea of the accused, in my opinion has reached the correct conclusion and convicted the accused officer by giving valid reasons. The judgment of the trial Court, therefore, does not suffer from any infirmity either in the appreciation of facts or on the application of law, and therefore the same is not liable to be interfered with.

27. The Criminal Appeal is accordingly dismissed.

NOUSHAD ALI, J

31st January, 2012.
Js.